

**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION  
AGENCY**

**Preamble**

This Memorandum of Agreement (MOA) is entered into between the United States Environmental Protection Agency (U.S. EPA) and the Wisconsin Department of Natural Resources (WDNR) to guide their partnership in promoting superior environmental performance through coordinated implementation of U.S. EPA's Performance Track and WDNR's Green Tier programs. U.S. EPA and WDNR believe that these performance-based programs, implemented in concert with traditional regulatory approaches, are engines for improved environmental protection. The Agencies agree that Green Tier and Performance Track serve as important tools for securing environmental results beyond what might be achieved through traditional approaches.

The Agencies agree that Green Tier and Performance Track are mutual areas of emphasis. Although the programs are different in many ways, the Agencies believe participants will benefit from coordination between U.S. EPA and WDNR. This Agreement and the Wisconsin Environmental Performance Partnership Agreement (WI-EnPPA) provide the framework and guidelines for coordinating implementation of the two programs. Through the WI-EnPPA, U.S. EPA Region 5 and WDNR commit to work as partners with the public to improve Wisconsin's environmental quality, strengthen the relationship between our agencies, and account for our progress toward meeting environmental goals. The WI-EnPPA outlines principles, processes, and actions the Agencies will take to meet these commitments. When appropriate, these agreed upon principles, processes and/or actions will be referenced in the Agreement.

**Guiding Principles**

The following principles will guide our working relationship as we support each other's program and work to make them successful. The Agencies further agree to use these guiding principles in the execution of the provisions of this Agreement.

1. Performance Track and Green Tier are designed to result in performance improvements.
2. Performance Track and Green Tier are engines for continuing environmental system change.
3. Performance Track and Green Tier are designed to enhance the traditional regulatory structure, not replace it.
4. Information on these programs, membership, activities, event schedules, and potential issues are routinely shared by the Agencies.
5. Performance Track and Green Tier will both be strengthened by ensuring timely communication of program events to potentially eligible entities.
6. U.S. EPA and WDNR will explore ways to align Performance Track and Green Tier.
7. U.S. EPA and WDNR will identify incentives that yield environmental and business value.
8. Issues are resolved through timely elevation to the Agencies' decision-makers.

## **Program Management**

Performance Track and Green Tier implementation will be advanced jointly by following the guiding principles, as well as implementation plans (e.g., communication strategy) developed as a result of this Agreement. We expect this Agreement to result in an increase in participation, better environmental outcomes, and a greater array of incentives as both programs mature.

### A. Notification/Application Process

#### WDNR will

- share Tier 1 applications with U.S. EPA as notification only, unless otherwise indicated, and
- share Tier 2 applications with U.S. EPA and provide U.S. EPA an opportunity to comment, and
- within 30 days of notification by U.S. EPA of the receipt of Wisconsin Performance Track application(s), provide compliance and enforcement status information, as well as any substantive comments for each application.

#### U.S. EPA will

- respond to WDNR within 30 days of receipt of Green Tier, Tier 2 applications, regarding how U.S. EPA will comment and/or participate in the application process, and
- notify WDNR of Performance Track applications from Wisconsin facilities (applications are available on the U.S. EPA website).

#### WDNR and U.S. EPA agree

- to work toward coordinating the application processes of Green Tier and Performance Track so eligible applicants can apply to both programs simultaneously.

## B. Program Communication

U.S. EPA and WDNR agree to develop a communication strategy to facilitate the sharing of information, coordinating actions and supporting each other on outreach and marketing efforts. The plan will be developed within six months of the execution of this Agreement and reviewed annually thereafter for the term of the Agreement. The basic elements of the strategy may include:

- Information sharing protocol for:
  - planned recruiting
  - marketing initiatives
  - publicity
  - program events
  - electronic, print and audio tools
  - administrative information
  - internet
- Shared responsibilities:
  - internal communications
  - collaborative recruiting
  - coordinated marketing
- Recognition events:
  - planning
  - joint participation as appropriate
  - joint sponsorship as appropriate

## C. Membership

WDNR agrees

- to consider all Performance Track members for participation in Green Tier, upon request by the member. Performance Track membership materials may be used as Green Tier application materials in lieu of new or original application materials,
- to provide Performance Track incentives to Performance Track members as allowed under Wisconsin law, and to work with Performance Track members to extend additional incentives through the Green Tier law, and
- to share Performance Track program information with Green Tier applicants and members.

U.S. EPA agrees

- to consider all Green Tier, Tier 2 applicants for Performance Track in the next round of enrollment if the company chooses to apply to Performance Track, and
- to share Green Tier program information with Wisconsin Performance Track applicants and members.

#### D. Conflict Resolution

For disputes arising in the implementation of this Agreement, WDNR and U.S. EPA agree to use the procedures for conflict resolution specified in the WI-EnPPA 2003-2005, Section V, Subsection F. on page 25 or the amended language developed for each subsequent WI-EnPPA.

#### E. Program Evaluation

U.S. EPA and WDNR agree that they will annually assess the impact of this Agreement within the context of the WI-EnPPA Self Assessment Reports. This assessment may include the following topics:

- Level and type of outcomes realized
- Level and type of stakeholder involvement
- Level and type of continuing interest in the programs on the part of eligible Wisconsin facilities
- Progress toward implementing program incentives, and any issues arising from enforcement and compliance actions

WDNR and U.S. EPA further agree to annually assess where further synergy can be created between the Green Tier and Performance Track programs. Annually the parties will consider if there are state incentives that could be further developed to enhance Performance Track and the alignment between the programs.

#### F. Point of Contact

WDNR and U.S. EPA agree to appoint a contact for this Agreement. The points of contact shall consult at least annually to assess progress toward meeting the conditions of this Agreement and determine whether the terms and conditions of this Agreement should be extended for an additional year.

#### G. Future Developments

WDNR and U.S. EPA acknowledge that the Green Tier program may contain elements that are outside the scope of the Performance Track program. WDNR and U.S. EPA agree to work together to identify these areas and determine how the Agencies can work together in these areas to move the program forward in a manner consistent with both the program's environmental goals and WDNR's delegated, authorized and/or approved state programs. Further, WDNR and U.S. EPA acknowledge that the Environmental Council of States and U.S. EPA are working to identify mutually beneficial ways to enhance the Performance Track program and State Leadership programs. When program modifications are agreed upon and formally adopted by U.S. EPA, the recommendations will be incorporated into the Performance Track program, as appropriate, and WDNR and

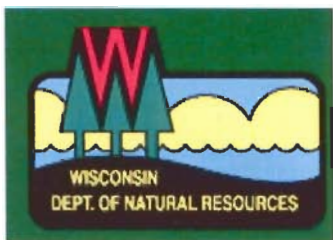
U.S. EPA will identify the impact of these changes on this Agreement, and will modify this Agreement accordingly.

#### H. Miscellaneous

All commitments made in this Agreement are subject to the availability of appropriated funds and each Agency's budget priorities. Nothing in Agreement, in and of itself, obligates WDNR or U.S. EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligation:

Neither WDNR nor U.S. EPA may endorse the purchase or sale of products or services provided by private organizations that become partners in this effort.

This Agreement does not create any right or benefit, substantive or procedural, enforceable by law or equity against WDNR or U.S. EPA, their officers or employees, or any other person.



**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES  
AND  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
For Coordination and Implementation of  
Wisconsin's Green Tier Program and  
U.S. EPA's National Environmental Performance Track Program**

This Agreement is hereby entered into this 3rd of October, 2005 and remains in effect until June 20, 2007. The duration of the Agreement is synchronized with the two-year cycle of the Wisconsin Environmental Performance Partnership Agreement (EnPPA). This Agreement will terminate just prior to the next cycle of EnPPA negotiations so that an independent review can be completed and new performance objectives and measures are developed and ready to be included in the new EnPPA.

10/3/05

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Secretary  
Wisconsin Department of Natural Resources

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Thomas V. Skinner  
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